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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 501.

THE MEMPHIS AND SAINT LOUIS RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

JOHN R. LOFTIN, COLLECTOR OF JACKSON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED APRIL 27, 1880.

SUPREME COURT OF THE UNITED STATES.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the Memphis and St. Louis Railroad Company, appellant, and John R. Loftin, collector, appellee, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears—

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred & third.

[SEAL.] RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

E. H. ENGLISH,
Chief Justice Supreme Court of Arkansas.

DEC. 21ST, 1878.

b STATE OF ARKANSAS,
In the Supreme Court:

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, hereby certify that in obedience to the mandate of the within writ of error, the judges of the supreme court of said State send, under their seal, to the Supreme Court of the United States the record and proceedings in the case within mentioned, with all things concerning the same, together with this writ (except as in the certificate to the transcript is excepted.)

In testimony whereof I hereto set my hand and affix the seal of the said supreme court, at my office, in the city of Little Rock, this 26th day of August, A. D. 1879.

[SEAL.] L. E. BARBER, *Clerk.*

(Indorsed:) Memphis & St. Louis Railroad Co. v. John R. Loftin, collector. Writ of error. Original.

1 STATE OF ARKANSAS,
In the Supreme Court:

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock on the 25th day, being the fourth Monday in November, A. D. 1878,

were the following proceedings on the 14th day of December, A. D. 1878, a day of said term:

MEMPHIS AND ST. LOUIS RAILROAD COMPANY, appellants,
vs.
JOHN R. LOFTIN, COLLECTOR, APPELLEE.
} Appeal from Jackson circuit court in chancery.

Be it remembered that on the 10th day of May, A. D. 1877, the said appellants filed in the office of the clerk of said supreme court, the transcript of the record, which is in the following words:

Complaint.

In the circuit court of Jackson County.

MEMPHIS AND ST. LOUIS RAILROAD COMPANY, plaintiff,
vs.
JOHN R. LOFTIN, AS COLLECTOR OF JACKSON County, defendant.
} Complaint in equity.

The plaintiff, The Memphis and St. Louis Railroad Company, would respectfully show that it is a corporation created by an act of the general assembly of the State of Arkansas, entitled "An act to incorporate
2 the Memphis and St. Louis Railroad Company," approved January 15, 1867, which is declared therein to be a public statute; that in order to advance and secure the building of said railroad, regarding it as a public highway of great importance, the said general assembly in the said charter granted the property of said company an exemption from taxation in the following language: "Sec. 21. The capital stock of said company, with all the immunities and franchises herein specified, and all machinery, cars, engines, or carriages belonging to said company, together with all their works, and property, and profits which shall arise from the same, shall be vested in the respective stockholders forever, in proportion to their respective shares; and the capital stock of said company, and the dividends, shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock, and the road, with all its fixtures and appertenances, including work-shops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road, or its fixtures which will reduce its dividends below ten per centum; said stockholders shall not be bound or liable for any greater amount than the respective share of stock which they or either of them own.

3 2. And it is also provided therein that said charter should be liberally construed; that relying on said exemption, said company was duly organized, and said charter was accepted, and citizens were led to invest in the stock of said company, as otherwise they would not have done, and thus the plaintiff submits that a contract was formed between the said State of Arkansas and the plaintiff that the property thus named should be exempted from taxation for the period and in the manner therein specified. And the plaintiff says that it is now the owner of the following lands, lying in Jackson County, that is to say:

Parts of sec.	Section.	Town.	Range.	Acres.	County.
S. ½	15	9	1 w.	320	Jackson.
N. E. ¼	15	9	1 w.	160	"
W. ½	27	9	1 w.	320	
W. ½ of E. ½	27	9	1 w.	160	
E. ½	28	9	1 w.	340	
N. ½ of W. ½	34	9	1 w.	80	
N. W. of N. E	34	9	1 w.	40	
E. ½ of E. ½	26	10	1 w.	160	
N. E. of N. E	35	10	1 w.	40	
				1, 600	

4 3. And that the said lands were acquired by the plaintiff and are now held by it for the purpose of raising money to build said road, and that it is a part of the property of said company, fully represented by its capital stock and not otherwise, and that said road has not as yet been completed, and that no dividend has as yet been realized on said capital stock, or any part thereof. Therefore the said plaintiff submits that said lands are not taxable, and were not subject to any tax for the year 1876; and yet, the said plaintiff says, that the assessor of said county has proceeded to assess said lands for the said year 1876, and that the said assessment has been carried into the tax-book of said county for said year, and that the tax-book aforesaid is now in the hands of the said defendant, as collector of said county, who now holds the same, as will appear by a copy of so much of said tax-book as refers to said lands hereto annexed marked, Exhibit A and made part hereof, and that the said collector is now proceeding to enforce the collection of said taxes, amounting, as shown by said Exhibit A, to the sum of dollars.

4. That a part of said lands, that is to say, said E. ½ of said section 28, were purchased as swamp and overflowed lands from the
5 State of Arkansas, under the provisions of an act of the said general assembly, entitled "An act to provide for the reclaiming of swamp and overflowed lands, donated to this State by the United States," approved January 6th, 1851, which act contained the following, among other provisions:

"SEC. 14. Be it further enacted, that to encourage by all just means the progress and completion of the reclamation by offering inducements to purchasers and contractors to take up said lands, that the swamp and overflowed lands shall be exempt from taxation for the term of ten years, or until said lands are reclaimed." And the plaintiff says that the said purchase was made, and that said lands were paid for with swamp land scrip of said act on contract for reclaiming swamp lands before the repeal of said section; and that although more than ten years have elapsed since said purchases were made, yet that no part of said last named land has ever been reclaimed. And the plaintiff says that the tax-book made out from said assessment has been placed in the hands of the defendant, who is the sheriff and collector of taxes of the State of Arkansas, who has demanded payment of said taxes, amounting in the aggregate to over dollars; and who threatens to proceed to sell the said lands if the said taxes are not paid, and
6 that the plaintiff has reason to believe, and does believe that said defendant, unless restrained by injunction, will proceed to do so; that by such sale a cloud will be cast on the title to said lands by the plaintiff, which will render them unsaleable in the market, and

that the said sale cannot be annulled in a court of law without bringing a multiplicity of suits against persons who may purchase at said tax-sales. The premises being seen the plaintiff prays that said defendant may be required to answer this bill according to the practice of this court, that a temporary injunction may issue commanding him and other agents or confederates of his to refrain from any and all attempts to enforce the collection of said taxes or any part thereof, and that on a final hearing, the said injunction may be made perpetual, and for all other proper relief.

E. H. PORTER, *Pres't.*
U. M. ROSE,
For Plaintiff.

STATE OF TENNESSEE,
County of Shelby, ss:

On this day came before me a notary public of said county, E. H. Porter, president of the Memphis and St. Louis Railroad Company, to me personally well known, and made oath that he believes the matters stated in the foregoing complaint to be true.

E. H. PORTER,
Pres't M. & St. Louis R. R. Co.

7 Subscribed and sworn to before me this day. Witness my hand and seal as notary aforesaid, this 28th day of November, 1876.

[L. S.] JOHN P. TREZEVANT,
Notary Public.

With the following endorsements. Fled March 8, 1877: H. C. Lowe, clerk, by Silvey Stuart, D. C.

Demurrer.

Jackson circuit court.

MEMPHIS AND ST. LOUIS RAILROAD COMPANY
vs.
JOHN R. LOFTIN, AS COLLECTOR OF JACKSON County. } Demurrer.

And the said defendant comes and demurs to the complaint herein, because he says it does not set forth facts sufficient to constitute a cause of action.

J. L. ABERNATHY,
Pros. Att'y, 3d District.

Order of court.

At a regular term of the circuit court in chancery sitting, begun, and held at the court-house in the town of Jacksonport, within and for the county of Jackson, in the State of Arkansas, on Monday, the 5th day of March, A. D. 1877, being the first Monday in said month, the
8 time fixed by law for holding said term, was present and presiding, Hon. William Byers, judge and chancellor of the third judicial circuit of Arkansas, in which is included said county of Jackson. Whereupon court was duly opened according to law, and proceeded to

the transaction of business, and the following among other proceedings were had.

MEMPHIS & ST. LOUIS RAILROAD COMPANY
vs.
JOHN R. LOFTIN, AS COLLECTOR OF JACKSON County.

Filing compl't and demurrer. Sustaining & Decree dismissing case.

Now, on this day came the plaintiff by its solicitor, and by leave of the court filed its complaint herein, and also came the said defendant, and by like leave filed herein his demurrer to the said complaint, and the said demurrer is now submitted to the court, and the court being now sufficiently advised of the law arising on the said demurrer, is of opinion that the law thereupon is with the defendant; whereupon it is considered that the complaint herein be, and the same is hereby, dismissed for the want of equity, and that the plaintiff pay all the costs of this suit, to which ruling the plaintiff excepted, and prayed an appeal to the supreme court, which is granted.

With the following endorsements thereon: Filed March 8, 1877.
9 H. C. Lowe, cl'k, by Silvey Stuart, D. C.

STATE OF ARKANSAS,
County of Jackson, ss:

I, H. C. Lowe, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the foregoing pages are a full and complete transcript of all the papers and proceedings of the court in the above-entitled cause, as the same appears now on file in my office.

In testimony whereof I have hereunto set my hand and seal of said court this the 7th day of May, A. D. 1877.

[L. S.] H. C. LOWE, *Clerk.*

Pro. in sup. c't.

Proceedings in the supreme court, at the November term, A. D. 1877, on the 30th day of March, A. D. 1878, a day of said term:

Submission.

Come said appellant and appellee by their attorneys, and this cause is submitted on the briefs filed and by the court taken under advisement.

And afterwards, to wit, on the said 14th day of December, A. D. 1878, at the November term, A. D. 1878, of said supreme court,
10 to which term this cause was continued by operation of law, were the followings proceeding, to wit:

Final decree.

This cause came on to be heard upon the transcript of the record of the circuit court of Jackson County in chancery, and was argued by counsel, on consideration whereof it is the opinion of the court that

there is no error in the proceedings and decree of said circuit court in chancery in this cause.

And it is the judgment of the court that there is nothing in the act of the general assembly of this State, entitled "An act to assess all the lands in this State heretofore donated to any railroad corporation where the title to such lands has passed from the Government of the United States," approved November 30, 1875, that impairs the obligation of any contract between the State of Arkansas and the Memphis and St. Louis Railroad Company, and nothing that is in contravention of section ten of article one of the Constitution of the United States, declaring that no State shall pass any law impairing the obligation of contracts, to which ruling the appellant at the time excepted.

It is therefore ordered and decreed that the decree of said circuit court in chancery in this cause be, and the same is hereby in all things affirmed with costs.

11 It is further ordered and decreed that the said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

And at the same time the court delivered the following opinion:

Op'n. of sup. c't.

This was a complaint in equity by the Memphis and St. Louis Railroad Company against John R. Loftin, as collector of taxes, to enjoin him from selling the lands of the plaintiff for taxes.

It was alleged in the complaint that the lands, which lie in six different sections, were acquired and held by the plaintiff for the purpose of raising money to build its road; that by the 21st section of the plaintiff's charter its capital stock was exempted from taxation until it yielded a dividend of six per cent., and its road, with its fixtures and appurtenances, for the period of twenty-five years from its completion, and no tax was ever to be levied on the latter which should reduce the dividends below ten per cent.; that the road was not completed, and no dividends had ever been declared or made, and that the lands were, therefore, exempt from taxation; that some of the lands, but

12 which were not stated or shown, were swamp and overflowed lands purchased from the State with swamp-land scrip, which, though purchased more than ten years before, were still unreclaimed, and those, for that reason also, were not subject to taxation; that the land had, notwithstanding, been, in 1876, assessed for taxation, and the defendant was then about to sell them for the taxes charged on them, and that a sale of them would cast a cloud upon the plaintiff's title, and would probably lead to a multiplicity of suits.

The defendant demurred to the complaint for want of equity. The demurrer was sustained and the complaint dismissed.

The plaintiff was incorporated on the 15th day of January, 1857, by a public act of the general assembly entitled "An act to incorporate the Memphis and St. Louis Railroad Company," the twenty-first section of which act is as follows:

"SEC. 21. The capital stock of said company, with all the immunities and franchises herein specified, and all machinery, cars, engines, and carriages belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders forever, in proportion to their respective shares, and the capital stock of said company and the

13 dividends shall be exempted from taxation until a dividend of

six per cent. is realized upon the capital stock, and the road, with all its fixtures and appurtenances, including work-shops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures which will reduce its dividends below ten per cent per annum." * * *

We are unable to distinguish this case, in principle, from that of the St. Louis, Iron Mountain and Southern Railway. 30 Ark., 693.

The eleventh section of the charter of the Cairo and Fulton Railway Company, now the St. Louis, Iron Mountain and Southern Railway, by consolidation with the St. Louis and Iron Mountain Railroad Company, under which the exemption in that case was claimed, is as follows:

"SEC. 11. That the capital stock and dividends of said company shall be forever exempt from taxation. The road, its fixtures, and appurtenances, shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum."

The language employed as to the property exempted from taxation, it is thus seen, is substantially and almost literally the same in both charters.

14 In that case the court held that the lands granted to the Cairo and Fulton Railroad Company to aid in the construction of its road were not a part of its capital stock, and as such exempt from taxation.

It is impossible to find ground for a discrimination between the cases; and the decision in that is conclusive as to the exemption claimed under the charter in this.

As to the swamp lands, had they been distinguished from the others, it is sufficient to remark that the act of January 6th, 1851, exempted them from taxation, though not reclaimed, only for ten years. (State vs. Crittenden County; 19 Ark., 360; McGehee vs. Mathis, 21 Ark., 40; McGehee vs. Mathis, 4 Wall, 143.

The decree of the court below is affirmed.

Presenting writ of error, filing copy, &c.

And on the 21st day of December, A. D. 1878, comes said appellant and presents to the clerk of the supreme court a writ of error to remove this cause to the Supreme Court of the United States, and at the same time files a copy of such writ, a copy of the citation to appellee, and a copy of the bond, which are as follows:

Copy of writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Arkansas, greeting:

15 Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the Memphis & St. Louis Railroad Company, appellant, and John R. Loftin, collector, appellee, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears—

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this

behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, ought to be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of
16 the Independence of the United States the one hundred and third.

[L. S.] RALPH D. GOODRICH,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

E. H. ENGLISH,
Chief Justice Supreme Court of Arkansas.

DEC. 21, 1878.

Copy of citation.

To John L. Loftin, collector, the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Arkansas, wherein the Memphis & St. Louis Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

17 Witness the honorable E. H. English, chief justice of the supreme court of Arkansas, this 21st day of December, A. D. 1878.

[L. S.] E. H. ENGLISH,
Chief Justice Supreme Court, Ark's.

Copy of Bond.

BOND.

Know all men by these presents, that I, U. M. Rose, am held and firmly bound unto John R. Loftin, in the just and full sum of two hundred and fifty dollars, to be paid to him the said Loftin, his executors, administrators, and assigns; to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents, sealed with my seal, and dated this 19th day of December, 1878.

Whereas, lately, at a term of the supreme court of Arkansas, in a suit depending in said court, between the Memphis and St. Louis Railroad Company, appellant, and John R. Loftin, aforesaid, appellee, judgment was rendered against the said railroad company, and the

said railroad company having sued out a writ of error from the Supreme Court of the United States, for the purpose of removing said cause into the said Supreme Court of the United States, and filed a copy thereof in the office of the clerk of the said supreme court of Arkansas, to reverse the judgment of the said court in the suit aforesaid, and
18 citation directed to the said Loftin, citing and admonishing him to be, and to appear at a Supreme Court of the United States, to be holden at Washington, the second Monday in October next:

Now, the condition of the above obligation is such, that if the said Memphis and St. Louis Railroad Company shall prosecute said writ of error to effect and answer all damages and costs if she shall fail to make good her plea, then the above obligation to be void; else to remain in full force and virtue.

U. M. ROSE.

Approved December 25, 1878.

E. H. ENGLISH,
Chief Justice Supreme Court of Aransas.

In testimony that the foregoing eighteen pages contain a full, true, and complete transcript of the record and proceedings of the supreme court of the State of Arkansas, in the case in the caption stated, except the briefs therein filed—

I, Luke E. Barber, clerk of said supreme court, hereto set my hand, and affix the seal of said court at my office in the city of Little Rock, this 26th day of August, A. D. 1879.

[SEAL.] L. E. BARBER, *Clerk.*

(Indorsement on cover:) No. 501. The Memphis & St. Louis Railroad Company, plaintiff in error, vs. John R. Loftin, collector of Jackson County. Arkansas sup. court. Filed 27th April, 1880.

OFFICE SUPREME COURT U.S.
FILED
NOV 4 1880
JAMES H. MCKENNEY, Clerk

IN THE

United States Supreme Court.

October Term, 1880.

THE MEMPHIS & ST. LOUIS R. R. CO.,
Plaintiff in Error,

vs.

J. R. LOFTIN, Collector, &c.,
Defendant in Error.

Brief and Argument of Humes & Poston

~~FOR DEFENDANT IN ERROR.~~

OFFICE SUPREME COURT U.S.
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IN THE

United States Supreme Court.

October Term, 1880.

THE MEMPHIS & ST. LOUIS R. R. CO.,
Plaintiff in Error,
vs.
J. R. LOFTIN, Collector, &c.,
Defendant in Error.

Brief and Argument of Humes & Poston

~~FOR DEFENDANT IN ERROR.~~

United States Supreme Court.

OCTOBER TERM, 1880.

MEMPHIS & ST. LOUIS RAILROAD CO.
vs.
JOHN LOFTON, as Collector.
} No. 783.

Brief and Argument of W. Y. C. Humes

For Plaintiff in Error.

This is a writ of error to the Supreme Court of Arkansas, prosecuted by the Memphis & St. Louis Railroad Company, to review a decree in the above entitled cause, dismissing appellants' bill in equity, filed to enjoin the collection of taxes imposed by a statute of Arkansas on 620,000 acres of swamp land owned by the appellant.

The equity of the bill is, that this statute imposing the obnoxious tax impairs two contracts made by the State with said railroad company; first, an exemption expressly granted in its charter; and secondly, an exemption granted by the State in the statute authorizing the sale of the swamp lands, and forming part of this contract of sale. The exemptions are both expressly and indisputably granted, and the only point of discussion is, their true construction, or the exact limits and extent of the exemptions.

Section 21 of the charter provides "That the capital stock of said company, with all the immunities and franchises herein specified, and all machinery, cars, engines, or carriages belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders forever, in proportion to their respective shares; and the capital stock of said company, and the dividends, shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock; and the road, with all its fixtures and appurtenances, including workshops, warehouses and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall be levied on said road or its fixtures which will reduce its dividends below ten per cent. per annum." Here are two clauses of exemption:

First—"The capital stock of the company and the divi-"dends shall be exempted from taxation until a dividend "of six per cent. is realized upon the capital stock."

Secondly—"The road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years, and no tax shall be levied on said road or its fixtures, which reduce its dividends below ten per cent. per annum."

The bill alleges, "that the lands sought to be taxed, "were acquired by the company, and are now held by it "for the purpose of raising money to build said road, and "*that it is a part of the property of said company, fully repre-*"*sented by its capital stock, and not otherwise.*"

The bill further alleges, "that neither of the contingencies have happened, which were to determine these charter exemptions; i. e., '*neither had a dividend of six per cent. been realized on the capital stock,' nor, had the road been completed twenty-five years, nor had it made a dividend of ten per cent. per annum.*"

Whether, therefore, the court construes these lands as belonging to, and identical with the capital stock under the first exempting clause; or as included in the description, "*the road, its fixtures, and appurtenances, etc.,*" under the second exempting clause, can, in regard to this discussion, make no difference, because both exemptions are still in force.

The land is, however, undoubtedly embraced in, and identical with the capital stock as to these exempting clauses, for the bill so alleges, and the demurrer admits the truth of the allegation.

The allegation is, "*that the lands were acquired by the company, and are now held by it, for the purpose of raising money to build said road, and that said lands are now held as part of the property fully represented by the capital stock, and not otherwise.*"

The meaning of this allegation is, that this land has been taken as capital stock in payment for subscriptions, and is held as the representative of the capital stock so subscribed, and to be used to raise money to build the road with, and not otherwise.

The court, on this demurrer, will take the allegation of fact upon the strongest construction that can be made in

favor of the complainant; that is to say, if there is any mode by which, under the charter, *this land could be acquired as capital stock*, the court will presume it was so acquired. This presumption, so made, would be in exact harmony and accord with the facts.

The charter, section 3, provides, "That if the capital "stock, at any time subscribed, shall be deemed insuffi- "cient, for the purposes of this road, it shall be lawful for "the company, from time to time, *to increase the said stock* "*by addition of as many shares as they may deem necessary*, "*for which they may, at their option, cause subscriptions to be* "*received, in the manner prescribed by them, or they may sell* "*the same for the benefit of said company.*"

See Appendix No. 1, p.

By the fifth and twenty-second sections: "The Board of Commissioners, aforesaid, until the election of the directors, may have and exercise all the powers and rights herein granted to said company, and do the matters and things herein specified, in order to commence and forward the construction of said road."

See Appendix No. 1, p.

By section eighth: "The directors shall have full power to make and prescribe, and put in force such bylaws, rules and regulations, and the same to alter and amend as they shall deem needful and proper, *touching the disposition and management of the stock, property, estate and effects of the company.*"

See Appendix No. 1, p.

And by a subsequent clause of the same section it is provided: "Said company may accept and receive donations

"in land or money, or any other property useful to the "company; may *purchase, hold and convey such estate as may* "*be necessary and convenient in accomplishing the objects for* "*which this incorporation is intended.*"

See Appendix No. 1, p.

Pursuant to this authority conferred by the charter, the company, by its board of commissioners, authorized additional stock to be issued to subscribers for swamp lands; that is, stock *to be paid in full* in swamp lands theretofore granted by Congress to the State of Arkansas, as "*swamp and overflowed lands,*" along the route of the road. The resolution declares: "That with the said lands, or the aid of the same, the building of the said railroad may be procured or materially promoted, and that the same would be useful to the company, and necessary and convenient in accomplishing the objects intended in the incorporation of said company, and therefore they will secure for the company as much of said lands as may be purchased with the stock," etc.

See Appendix No. 5, p.

Pursuant to this resolution and by-law the company did obtain, by issuing its stock, several hundred thousand acres of these swamp and overflowed lands, and among them the identical lands set forth in the bill.

See Appendix Nos. 2, 3, 4, pp.

I have used the third, fifth and eighth sections of the charter and the bylaw or resolution to issue stock for the swamp lands and the deed of Walker, to show that this land sought to be taxed is the swamp and overflowed land obtained in payment for stock subscribed; and, hence,

these lands are identical with the capital stock under this charter.

This court have declared "that courts in construing a "statute may, with propriety, recur to the history of the "times when it was passed; and *this is frequently necessary, "in order to ascertain the reason, as well as the meaning of "particular provisions in it.*"

Aldridge v. Williams, 3 How., 24; Preston, v. Browder, 1 Wheat., 120.

United States v. Union Pac. R.R. Co., 91 U. S. R., 79.

Again, in delivering the opinion of this court, in Platt v. Union Pacific R. R. Co., 9 Otto R., 56, Mr. Justice Strong, at p. 60, second paragraph, says: "In construing "a statute, we are to look at the state of things then existing at the date of the passage of the statute, and in the "light then appearing seek for the purposes and objects of "the Legislature in using the language it did, and we are "to give such construction to that language, if possible, as "will carry out the legislative intentions."

See, also, 7 Cush. (Mass.) R., 53 to 59.

See, also, 5 Mich. R., 114.

See, also, 97 Mass. R., 466.

See, also, 35 Cal. R., 576.

This charter was granted to secure the building of a railroad through ninety miles of swamp and overflowed lands, commencing at a point, on the west bank of the Mississippi River, opposite Memphis, Tennessee, thence on a direct line toward St. Louis, Missouri, through the counties of Crittenden, Mississippi, Poinsett, Craighead, and Laurence, in Arkansas, to a point on the St. Louis and

Iron Mountain Railroad. The lands are alluvial and of matchless fertility, covered densely with the finest timber, but almost wholly uninhabited and useless. By reclamation, and such facilities for travel and transportation, as would be afforded by the operation of this railroad, when completed, they would be converted into most productive agricultural lands, and filled with settlers. The building and operation of this road would assure the speedy reclamation and occupation of these lands, and thus greatly add to the productive wealth of the State. At the same time the railroad would have to wait on this effect for any return to the stockholders on their investment. The United States, by an act, approved September 28th, 1850, had granted to the State of Arkansas the whole of these swamp and overflowed lands, "to enable the State of Ark-"ansas to construct the necessary levees and drains to re-"claim said swamp and overflowed lands."

See sec. 1, Appendix No. 6, p.

The second section makes it the duty of the Secretary of the Interior "to cause a patent to be issued to the State for "said lands, vesting it with the fee-simple," but *provided*, "*however*, that the proceeds of said lands, whether from sale "or by direct appropriation in kind, shall be applied, exclu-"sively, as far as necessary, to the purpose of reclaiming "said lands, by means of the levees and drains."

See Appendix No. 6, p.

The State of Arkansas had, by appropriate legislation in 1851, adopted a system of selling these lands "*at prices* "*based upon their location and the value* THAT WILL BE ADDED "TO SAID LANDS BY RECLAMATION."

See section 3 of an act of the State of Arkansas, approved Jan. 6, 1851. Appendix No. 6, p.

By section 4 of the same act the State stipulated "*that "the payment for making the levees and drains shall be made in "the lands reclaimed, or in the proceeds of the sales thereof.*" This was a stipulation binding the State to the buyers to reclaim the lands.

See Appendix No. 6, p.

By section 14 of the same act, it is provided: "That to "encourage by all just means the progress and completion "of the reclamation, *by offering inducements to purchasers and "contractors to take up said lands; the swamp and overflowed "land shall be exempt from taxation for the term of ten years, or "until said lands are reclaimed.*"

See Appendix No. 6, p.

In granting the charter of the St. Louis and Memphis Railroad Company it is manifest, therefore, that the Legislature intended to present to those who would embark in this projected scheme a most liberal charter, and to hold out every inducement which might lure persons to buy these lands from the State, and put them into the capital stock, and build this road.

The sections third, fifth and eighth of the charter, already quoted, give these remarkable powers to the company, i. e., to increase or add to the shares of stock to whatever extent the Board of Commissioners or directors might deem needful, and to prescribe the mode of payment, or sell them. Also, to take donations of land, or purchase land to effect the building of the road.

The Legislature, looking to the condition of these lands, knew *they could only become valuable by the completion of this*

road, and their consequent reclamation and settlement; and that the road could only become valuable and profitable after the country should be so reclaimed and settled up; hence they *postponed the imposition of taxes on the capital stock and dividends until a dividend of six per cent. should be realized on the capital stock; and deferred, also, taxing the road, with all its fixtures and appurtenances, for twenty-five years from its completion, and until its dividends should exceed ten per cent. per annum.*

In both exempting clauses, the contingency on which the exemption *is made to determine is that degree of prosperity which should produce dividends.* These extraordinary provisions show that the Legislature fully appreciated the hazard of the enterprise, the uncertainty of its success, and were offering the most generous inducements to allure capitalists and future settlers to embark in this adventure. The inducements so offered look to getting individuals to buy these swamp lands from the State, and invest them in the enterprise.

And that the courts might not mistake the liberal intention of the Legislature, in framing the provisions of this charter, the twenty-third section expressly enacts, "*this act* "*shall be held and deemed a public act*, AND BE LIBER- "ALLY CONSTRUED."

These lands were not donated, or purchased under a statute passed subsequent to the charter, as in the case of the Cairo & Fulton Railroad Company; "they were not "used in lieu of capital, nor given in aid of the construc- "tion of the road, to relieve the company to that extent "from the necessity of raising money through stock sub-

"scriptions," as in the case of the Cairo & Fulton Railroad Company.

These lands were acquired under the provisions of the original charter, authorizing the company (sec. 3) "to increase its stock by "addition of as many shares as they may deem necessary, for "which they may, at their option, cause subscriptions to be "received, in the manner prescribed by them, or sell the same."

They were acquired, *as capital stock*, taken directly in full payment of subscriptions, their proceeds to be used to raise money to build the road; they are identical with, and the exact and precise representative of the capital stock, taken to pay the subscriptions, just as money paid into the company for stock subscriptions.

Chief Justice Waite, in delivering the opinion of the Supreme Court in the St. Louis, Iron Mountain and Southern Railroad Company v. Loftin, (98 U. S. R., 559,) shows "that the lands sought to be placed within the exemption of the capital stock under the eleventh section of the charter of the Cairo and Fulton Railroad Company, *were the subject of a voluntary grant from the Government, made years subsequent to the charter;* that the language of the grant *expressly separated, for the purposes of taxation, the road, fixtures, lands, tenements and houses from the capital stock.* And then he adds: "But there is nowhere in the repealing act "any intention shown of *converting the lands into capital* "*stock*, and without some express declaration to that effect "no such conversion will be presumed. The lands were "used in lieu of capital stock. They were given in aid of "the construction of the road, and to that extent relieved "the company from the necessity of raising money through

"stock subscriptions; but it would be unreasonable to hold "that because they rendered stock to some extent unneces- "sary, they were on that account stock itself."

I make this quotation from the opinion of Chief Justice Waite, to present the contrast existing as to the lands now under consideration and those considered in that case.

In this case, the original charter authorizes the company to issue additional shares of stock to any extent they may deem needful, and prescribe the mode of paying such subscriptions, or to sell them; the company did issue such additional shares, pursuant to this authority, and prescribed that they should be paid in swamp lands, to be held and used as capital stock to build the road with. The stock was so subscribed, and paid, and these lands are so held; the very capital stock, as fully and exactly, as money paid for shares subscribed.

No provision, in this entire charter, separates and distinguishes from the capital stock, the lands received in payment for stock subscriptions, and taken as capital stock.

In the case of Railroad Companies v. Gaines, (97 U. S., 697), the court declare: "That an exemption of the capi- "tal stock from taxation is equivalent to an exemption of "the property into which the capital stock has been con- "verted, when taking the whole charter together, it is "apparent the Legislature so intended." "Thus," (say the court,) "the capital stock of a bank usually consists of "money paid in to be used in banking, and an exemption "of capital stock from taxation must necessarily mean an "exemption of the securities into which the money has "been converted in the regular course of a banking busi-

"ness. And, in general, an exemption of capital stock "without more, may, with great propriety, be considered, "under ordinary circumstances, as exempting that which, "in the legitimate operations of the corporation, comes to "represent the capital."

The application of the rules (above laid down by this court), to the case at bar will demonstrate that these lands are exempt.

The charter authorizes the company to increase its capital stock to any amount of shares they may deem needful, and to prescribe the mode of paying such subscriptions, or to sell them. It further expressly authorizes the company to purchase and take conveyances of lands to effect the purposes of the charter.

Under these powers, the company issued stock and received payment for the stock in lands held to raise money and otherwise use to build and equip the road. Clearly, these lands are identical with and represent the capital stock under the above rules unless there is some provision in the charter manifesting an intent to separate and distinguish the capital stock from these lands for the purpose of taxation. The charter contains no such provision. On the contrary, the other provisions of the charter manifest a legislative intent not to separate these lands so acquired from the capital stock.

First. In the twenty-first section of the charter, and in the clause immediately preceding the one which contains the exemption of the capital stock, is a legislative definition of the words capital stock as used in this charter. This definition is expressed as follows: "The capital stock of

"said company, with all the immunities and franchises "herein specified, and all machinery, cars, engines, or "carriages belonging to said company, together with all "their works and property, shall be vested in the respec- "tive stockholders forever, in proportion to their respec- "tive shares."

This cannot be interpreted otherwise, than as a declaration, that the words, "capital stock," include for the pur- "poses of this charter, and in favor of stockholders, *all "the immunities and franchises specified in the charter, and all "machinery, cars, engines, and carriages belonging to said "company, together with all their works and property.*"

For, the clause has one of two meanings, either to vest all the rights and property of the corporation in its stockholders, as against the company; or it means to declare that the interest of the shareholders, by virtue and in right of their shares, extends to, and embraces the capital stock, including therein and thereunder the entire property, rights, immunities, and franchises of the corporation. To give it the former meaning would be absurd, for it would destroy the powers and effective usefulness of the corporation. Then it can only have the latter sense, i. e., that the capital stock embraces the entire rights and property of the company.

Having thus defined the words, "*capital stock*," then follows the clause: "And the capital stock and the divi- "dends shall be exempted from taxation until a dividend "of six per cent. is realized on the capital stock."

The language of this clause further manifests the same intention of including in the meaning of the words "capi-

tal stock," all the property of the company; for the language is: "*Until a dividend of six per cent. is realized on the capital stock.*" Dividends are earned and realized by and on the operations of the corporation in the use of its entire property, including its rights, franchises, immunities, and all its *machinery, cars, engines, carriages, and all their works and property.*" Thus it is plain the Legislature used the words "*capital stock*" as synonymous with the above terms.

The next clause of exemption strengthens this conclusion, for it uses the word "*road*" in the sense of, or as meaning *all the property of the company.* Its language is, "and the road, with all its fixtures and appurtenances, "including workshops, warehouses, and vehicles of trans- "portation, shall be exempted from taxation for the period "of twenty-five years from the completion of the road, and "no tax shall ever be levied on said road or its fixtures "which will reduce its dividends below ten per cent. per "annum."

The word "road," as used in the above clause, cannot mean *the mere road bed*, but *it means the entire property of the company;* for the last clause is: "*No tax shall ever be levied on said road or its fixtures which will reduce ITS dividends below ten per cent. per annum.*" "Its dividends" mean the dividends earned, not by the *road bed*, or any part of the property, but by the entire property comprehended in the popular term. "*road.*"

If the word "*road*," as used in this clause, is not taken in this comprehensive sense, and according to its popular use, the concluding restriction, "*and no tax shall ever be "levied on said road or its fixtures which will reduce its divi- "dends below the ten per cent. per annum*," is rendered nuga-

tory, useless, and unmeaning; for the dividends are made and produced by the operations of the corporation, in the regular and legitimate exercise of all its rights, immunities, and franchises, and the use of all its property; neither the road nor the road bed, in their exact and technical sense, ever make or produce dividends. "*Its dividends*," means the dividends of the "*road*," this word being used, according to its popular acceptation, as synonymous with "*company*," or "corporation," with all its property.

To construe these two exemptions as not embracing the lands acquired in payment for subscription of and to the capital stock, is wholly to defeat the express provisions of the charter as to exemptions from taxation; for the section 21 expressly forbids any tax either on the capital stock and dividends, or on the road and other property, until a dividend of six or ten per cent. is realized and declared, the initial limit of taxation in both exemptions being fixed by, and made dependent on, the realization of dividends. To admit the authority to tax these lands before dividends are realized would necessarily defeat both exemptions; for to tax any of the property before a dividend is realized is pro tanto to defeat a dividend on the whole property; and to admit the power to tax any of the property is to admit a power wholly repugnant to, and destructive of, the exemptions granted by both clauses; for the power to tax any of the property involves the power so to tax as to exhaust the profits and dividends, and to tax any of the property to any extent is so far to take from the profits, and prevent dividends.

It cannot be that the court will presume a reservation

of power to tax so totally in denial of and destructive to the express exemptions granted by the charter.

In determining what is the capital stock of a railroad company, difficulty has very often arisen from the manner in which the property existing has grown out of the capital or accumulated from its profits. But the present case is simplified of all such elements. Capital used in the purchase of property is still deemed to be virtually existent, though in its form of money it has gone out from the corporation. Profits on the use of capital is held to be capital, until it is transmuted into dividends, and so becomes the separate individual property of the stockholder.

But in the case of the St. L. & M. R. R., the land subscribed for stock, and received in payment for stock, is the very contribution to the original capital of the concern unchanged, and it does seem to present the question in the most simple form conceivable.

It is supposed that there is something in this charter to distinguish between the stock and other property, while we read the same provision as intended to define those very articles as making part of the capital. The act declares the capital, with the property enumerated to be the property personal, of the stockholders." Now, there are but two meanings which can attach to the language. It must mean that they own the property as they own the capital, as represented by their shares, and as shareholders of the company. Or it must mean that they own the capital as they own the property, and both as they own their own individual riding horses and household property,

absolutely and personally. This latter is not consistent with the very idea of corporate property, and the first is therefore the only tenable theory.

If, then, the property is held in the same way as the original capital, with the same quantity and quality of estate in it (so to speak) as the stockholder has in capital, in what does it differ from capital? In other words, what prevents it from being capital?

What is capital? Capital is whatever goes into a concern as a permanent investment. Capital stock, or stocked capital, is whatever capital is represented by stock. In the present case all the property enumerated by the charter is, upon the construction we have adopted, by express declaration vested in the stockholders *as stock*. It is permanently invested in the business, just as the capital is, until it takes the form of dividend, or until it is turned into money and divided. It is capital stock.

It is the use of words in an expository sense, explanatory. Often the use of a word is followed by a conjunction and a phrase or sentence expository of what precedes. Here, capital stock with property, etc.; the latter, may we admit, will be construed to mean to distinguish one from the other, but it may equally well mean to include what follows in capital. Now, which does it mean? When we find that it is placed on the footing of stock, that it is to be held as such, we see that it is not possible to give it the construction which discriminates it, but that the one which merges it is the true one.

The second point I present is this: The contract by the State, in favor of the patentees or grantees of the

swamp and overflowed lands, evidenced by the statute of 1851, passed January 6, 1851, provides that these lands *shall not be taxed for ten years, or until reclaimed.*

Appendix No. 6, p.

The true construction of this exemption is, that the lands shall be exempt for ten years absolutely, and for as many years afterwards as the lands remain unreclaimed.

To arrive at a true interpretation of this exemption it will be necessary to look at the legislative history of these lands, as they passed from the Government of the United States to the State of Arkansas, and from the State to the patentees under the State.

A fact already stated must be borne in mind, that these are swamp and overflowed lands, of inexhaustible and matchless fertility, densely covered with the finest forests of timber, but totally unavailable and useless because of their swampy condition. Congress, on the 28th of September, 1850, passed an act granting to the State of Arkansas the whole of the swamp and overflowed lands within the limits of that State, "*to enable Arkansas to construct the necessary levees and drains to reclaim said lands, unfit by reason of said swamps for cultivation.*"

See section 1 of said act at p. of Appendix No. 6.

On the execution to the State of the patent, by the Secretary of the Interior, for said lands, the second section of the act provides, "*the fee simple to said lands shall vest in the* "*said State of Arkansas, subject to the disposal of the Legisla-* "*ture thereof;* PROVIDED, HOWEVER, THAT THE PROCEEDS OF "SAID LANDS, WHETHER FROM SALE OR BY DIRECT APPROPRIA- "TION IN KIND, SHALL BE APPLIED, EXCLUSIVELY, AS FAR AS

"NECESSARY, TO THE PURPOSE OF RECLAIMING SAID LANDS, BY "MEANS OF LEVEES AND DRAINS AFORESAID."

See Appendix, No. 6, p.

The statute of Arkansas passed to dispose of these lands after they had been, as above shown, patented to the State, provided in the third section of said statute, that the commissioners appointed under the act to survey and sell the said lands, "*should fix the price of the swamp and overflowed "lands*, [donated to the State of Arkansas, by the act of "Congress,] *in their present condition, taking into consideration "their locality*, AND THE VALUE THAT WILL BE ADDED TO SAID "LANDS BY THEIR RECLAMATION."

By the eighth section, it is provided, "That after the "said board of commissioners shall fix the price of said "lands in their present condition, taking into consideration "their locality AND THE VALUE THAT WILL BE ADDED TO SAID "LANDS BY THEIR RECLAMATION, they shall have power to "sell any portion of the same, for cash, at not less than "the price so fixed, the proceeds to be applied to reclaim-"ing said lands."

See Appendix 6, p.

Section fourteenth enacts: "That to encourage, by all "just means, the progress and completion of the reclama-"tion by offering inducements to purchasers and contract-"ors to take up said lands; *that the swamp and overflowed "land shall be exempt from taxation for the term of ten years, or "until said lands are reclaimed.*"

See Appendix 6, p.

The lands now held by this railroad were all purchased under this act and paid for in cash by the purchasers

at the prices fixed, taking into consideration that said lands, under this contract, were to be reclaimed by the State with the proceeds. The State has wholly and utterly failed to reclaim the lands.

Now, she proposes to tax them still remaining in their unreclaimed condition, as unfit for cultivation as when donated to her by the Government; notwithstanding she has received the purchase money at prices fixed on them as reclaimed lands.

The injustice and cruel oppression of the State's interpretation demonstrates the propriety and correctness of the opposite construction.

The State received the lands on the express condition and for the express purpose of so disposing of them as to reclaim them with the proceeds of their sales.

The State sold and conveyed them at prices *fixed on them as reclaimed lands*, and on the express stipulation that she would reclaim them with the purchase money.

Having received the proceeds in cash, of sales made at prices fixed on them as reclaimed lands, and stipulated to reclaim them with the funds so received, she further stipulates, as part of the grant, expressly that these lands shall be exempt from taxation for ten years, or until reclaimed. The lands are utterly worthless unless reclaimed. She has the funds to reclaim them, she has sold them as reclaimed.

Now, to adopt the construction that she shall not tax them until reclaimed is to follow that view of the contract,

that is apparent in all its terms, and coincides with its only purpose, and with the manifest justice of the case.

To adopt the other, is to pervert the contract into a trick, putting it in the power of the State, by her own default, to regain the lands without paying a dollar for them, and still hold on to their value.

In regard to the construction of the overflowed land act, and the exemption of the land for ten years or until leveed or drained, I admit frankly that the grammatical construction is in favor of the reading that the happening of either event will put the right to tax in operation. We must then, I also admit, be able to overcome this *prima facie* construction. The weight of this *prima facie* construction, however, is very slight. The authorities show that the courts have often had the occasion to say that they will substitute *and* for *or*, and *vice versa*, until it has established the position that the indications which each affords is very slight, weighs very little.

Now, in giving a reasonable construction to the Arkansas statute, what are the overweighing considerations?

1. The State was anticipating in their mode of valuation the added value which amelioration would give to her lands, and was demanding from the purchaser a value they did not then possess—an advance of money on unavailable property which could only begin to give him a profit when the State complied with her contract to ameliorate the property. We may well imagine a negotiation between the State and a purchaser, before the statute, to arrange the terms of sale. Suppose the proposal of the State to be to exempt the property from taxation until

the draining is accomplished. Would not the buyer naturally suggest: But possibly it may be several years before this property, by drainage, becomes available to me. You have my money now. You pay me no interest. You give me property not available for some years. It is fair to give me some equivalent. You will, perhaps, drain these lands all in five years. Say exempt the property for ten years. Then say ten years, instead of until drained. But it may be the purchaser would say that there will be cases where the drainage may in exceptional instances be delayed. Of course, there is no case in which you ought to collect anything from this property, until you have performed the condition on which we buy.

Now, so obvious is the fairness of these grounds of objection to a contract plainly written to give the State a benefit while she is in default on the most material part of the contract by her to be performed, that we can hardly conceive it possible that a Legislature intentionally would disregard such considerations. When then we come to construe provisions which are claimed to intend this very injustice, will we not require to be satisfied by cogent reasons that the intention exists? We have admitted slight grammatical reasons in that direction. We have shown strong practical ones in the other direction. Which shall prevail?

The construction adopted at the outset of the practice under the statute must have been fatal to the purpose of the State. Suppose a man to have the taking up of land in Arkansas presented to him. He sees that it is to be valued in view of its amelioration, measured by that element. He says: I pay now for a value that does not now

exist. I must at any rate pay taxes from the moment the land is drained, and after ten years must pay, drained or not drained. I get no equivalent for advancing money under any possible contingency.

The act was intended to induce purchasers. If it can have a construction which will forward that intention it must have it. If it cannot have such a construction, and only if it *cannot*, then it must be held otherwise.

We do not understand that this case involves any question of the right of this company, under its charter, to accept these lands in payment of stock. That is assumed on all hands. The provisions of the charter are broad enough to confer the authority. It was so construed from the day of organization. The use of land subscriptions in the absence of a statute of mortmain is not discouraged in the United States. The necessity of a corporation parting with the title to such property, to render it profitable, does away with any objection that ever could have existed to the ownership of lands by a corporation. The absence of leases from the practice of our country, and the usage of allodial ownership, which renders long leases impracticable as a means of disposing of wild lands, all make the holding of lands by railroads harmless.

But it is enough to say that the State proceeds in these very cases, against the company, as owner of the lands, and that this is not an inquisition of office to declare the lands forfeited for want of capacity to hold lands, or to receive them on such considerations.

The Legislature and officers of the State and counties have for many years given a practical construction to this

act such as we now claim. I do think the mere failure to pass an act to tax this property is very significant of a construction that they were not taxable, as there were nearly one million of acres in the four counties. But, when we consider that all lands are taxed, and that these come within the designation, and that yet, no comptroller or auditor, and no county ever held it to be the duty of the revenue officers to assess and collect such tax, until the enactment of the present law in 1875, it does clearly show that such was the universally received construction.

W. Y. C. HUMES,
Of Counsel for Appellants.

Appendix No. 1.

AN ACT to incorporate the Memphis and St. Louis Railroad Company.

Be it enacted by the General Assembly of the State of Arkansas,

Section 1. That H. B. Edmonson, James F. Barton, Colbert Coldwell, Elliott H. Fletcher, Thomas J. Blackmore, Andrew B. Slavey, Rhea Wallace, and their associates, Amos Woodruff, W. A. Beckford, Ethel H. Porter, Thomas Peters, Samuel P. Walker, Miles Owen, A. O. Harris, Robertson Topp, Daniel B. Turner, Robert C. Brinkley, Samuel Tate, J. T. Swayne, James Elder, J. N. Barnett, John Overton, A. M. Hopkins, C. B. Guthrie, F. M. Ryland, L. M. Kennett, William M. Morrison and James H. Lucas, with such other persons as shall associate with them for that purpose, are hereby constituted a body corporate and politic, by the name and style of the Memphis and St. Louis Railroad Company, with succession for ninety-five years, and by such name shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, either in law or equity, purchase and hold lands and chattels, make, have and use a common seal, and the same alter and renew at pleasure; have the power of a motion, and to make contracts and enforce the same, and establish and put in full force by-laws, rules and regulations for the government of the corporation, and necessary and proper to

carry into effect the powers and privileges granted said company, and all the necessary and common incidents of bodies corporate and politic, and all the powers incident to such at common law, and said company may survey, locate, complete, construct, alter, maintain, operate and repair, a single double or treble railroad or way, from a point on the west bank of the Mississippi river, oposite to the city of Memphis, Tennessee, and on or near a direct line between the same and the city of St. Louis, Missouri, and running thence as nearly as the said company may deem it practicable, in the direction of St. Louis, so as to reach a point on or connect with the St. Louis and Iron Mountain Railroad, or any other railroad or points thereon, in that general direction, with power to contract for a connection or connections with either, or any road or roads running from Memphis towards New Orleans, Louisiana, and Charleston, South Carolina, so as thereby to form a through line between said cities of St. Louis, Memphis, New Orleans, and St. Louis, Memphis and Charleston, and said company may take, transport and carry property and persons on their said road, by the power and force of steam, or of any other mechanical or other power or any combination of them, which said company may choose to apply, and for the purpose of constructing the said railroad or way, the said company may lay out the road, not exceeding two hundred feet in width, the whole length of the line thereof, upon and through any of the lands or waters belonging to the State of Arkansas, and have the right of way of the width aforesaid, to-wit: That the same, not otherwise appropriated, with the right of taking from such lands contiguous thereto, stone, timber and materials necessary for construction of so much of said road as is near thereto, and said company

shall also be entitled to take and appropriate to the use of the road, such lands of individuals as may be necessary for a road-bed of the width aforesaid, and for the purposes of depots, cuttings, embankments, warehouses, water stations, and other structures necessary for the use of said road, and to take stone and timber from adjacent lands for the construction of said road, by donation, private contract, or by having the land and other privileges aforesaid valued, condemned and damages assessed, and by paying the same in accordance with the act of the General Assembly entitled An Act providing the mode of procedure for obtaining the right of way for railroads in this State, and said company may construct bridges over navigable and other rivers, streams and sloughs, decide whether the crossing thereof shall be by bridges or steam ferries, prescribe the width and length of said bridges and the size of the proper draws for the passage of vessels, when over a navigable stream ; *provided*, There shall be no obstruction of the free navigation of any navigable stream shall be made or allowed, contract specially for work, labor and materials, to be furnished to the company, and agree whether the whole or any part thereof, shall be payable in the capital stock of the company ; to hire or purchase hands and laborers ; to appoint a secretary, treasurer, superintendent, engineers, solicitors and other officers or servants, necessary or proper, for the faithful performance of any duty necessary to the construction and proper maintenance of the said railroad, and to unite any two or more of them in one person ; to receive from the State or General Government, a grant of land, or become the agent of either to dispose of land granted, and with the same, or the aid of the same, to procure the railroad to be built ; to make all contracts necessary thereto, and all

contracts for the furnishing of iron or other necessary equipments or supplies of the road, on such terms and credit as they may think proper, including all locomotives, cars, vehicles, teams, and other equipments deemed necessary or useful to the purposes of the company; to borrow money for and on account of said road, and to mortgage said road and appurtenances to secure the same; to mortgage said road or hypothecate its receipts, to pay persons who take contracts for building the same; when said road or any part thereof shall be finished, to fix the rates of toll for passengers and merchandise; to fix a telegraph wire along said road, and regulate the fees for messages sent; to accept donations in land or money, or such material or labor as may be useful to the company; to accept relinquishments of the right of way or purchase releases of the same, and to that end submit questions of compensation to the proper tribunal of arbitrators, or to settle the same themselves, by way of compromise or delegate the power to do so; cause to be kept a regular set of books, in which shall be entered in regular order of their respective dates all business or other transactions of the company, which books shall always be open to the inspection of any stockholder at the office of the company during the business hours of the day, which office shall be kept at such place as said company may direct, and shall also keep a stock book, and certificates of stock shall be issued to the stockholders, and no transfer of stock shall be binding on the company until made on its own stock book.

Sec. 2. Said company may make any lawful contract with any other railroad company in relation to the business of said company, and make joint stock with any other

railroad company in said State of Arkansas, or any other adjoining State, and form one board of directors for the running management of said railroad, in the States through which the same shall pass, and make such contracts or arrangements as they may deem proper, for uniting with other roads, and for any other purpose that may by them be deemed necessary to facilitate and carry out the objects and purposes herein contemplated, with all such necessary power as shall best enable said company to carry into effect and fully ensure the complete and harmonious operation of said road; and said company may make such contracts and agreements as they may deem expedient for the connection of any branch roads with theirs, that they may determine the advantages to the business and revenue of said railroad and the company.

Sec. 3. The capital stock of said company shall be one million of dollars, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be transferred, in such manner and at such places as said company may direct, when not herein provided for; *Provided*, That if the capital stock of said company, or the actual amount, at any time subscribed, shall be deemed insufficient for the purposes of this road, it shall be lawful for said company, from time to time, to increase the said stock by addition of as many shares as they may deem necessary, for which they may, at their option, cause subscriptions to be received, in the manner prescribed by them, or they may sell the same for the benefit of said company.

Sec. 4. Five of the persons named in the first section, or a majority of them, shall open books to receive subscrip-

tions to the capital stock of the company, at such times and places in this State, and elsewhere, as they or a majority of them may appoint, and shall give such notice of the time and place of opening said books as they may deem reasonable, and shall receive such subscriptions, under such regulations as they may adopt for the purpose, and may appoint deputies or agents for receiving subscriptions; said persons to be styled the Board of Commissioners, who shall supply any vacancy therein, that may happen by death, resignation, neglect, or refusal to accept.

Sec. 5. The immediate government and direction of the affairs of said company shall be vested in a board of directors, who shall be chosen by the stockholders of said company out of their own number, in the manner hereinafter provided, and shall hold their office until others are elected and qualified to take their places as directors; said directors being seven in number, four of whom, the president being one, shall be a quorum for the transaction of business. The board of commissioners, aforesaid, until the election of said directors, may have and exercise all the powers and rights herein granted to said company, and do the matters and things herein specified, in order to commence and forward the construction of said road, and for the time being may appoint a president and other officers, from among their number, necessary to the organization of said board, and the business and duties thereof; and the said board of commissioners shall consist of H. B. Edmonson, Thomas J. Blackmore, Rhea Wallace, Thomas Peters, Samuel P. Walker, Elliott H. Fletcher and Ethel H. Porter, and when the board of directors aforesaid shall have been elected they

shall choose one of their number to be a president of said company, and shall also choose a secretary and treasurer, and such other officers as they may deem necessary, and the same remove at pleasure, and from time to time fix their compensation. Said company shall keep a journal of their proceedings, in which shall be entered all the by-laws, rules and regulations, and all orders for the payment of such allowances as may be made to their officers, contractors, and all others in their employ; which journal shall, from time to time, be read before the board of directors, and, if found correct, signed by the president.

Whenever the president shall be absent said board of directors may elect a president *pro tempore*, and they shall fill all vacancies that may happen by death, resignation, or a failure to elect in the case of a tie vote, decline or refusal to elect, or in any case one ceases to be qualified to act as a director, or from any other cause whatever.

Sec. 6. The persons authorized by the fourth section, above, to open the books for subscription to the capital stock of said company, are hereby authorized, after the said books are closed, or when the sum of one hundred thousand dollars shall have been subscribed, to call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint, for the choice of the directors of said company, and they shall hold an election for the first board of directors in such form and manner as they may prescribe, and grant certificates to those elected. In all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote shall be given by said stockholder in person or by proxy; and the annual meetings of the stock-

holders of said company for choice of directors, after the first one, shall be holden at such time and place, and upon such notice, as the said company in their by-laws may provide herein; the vote shall be given by ballot. No share shall confer a right to vote at any election, unless the same shall have been held three months previous to the election, except the first election, which shall, in that case, be held at least one month; but no stockholder shall be permitted to vote while in default, or continue in office as a director at any time during such default; nor shall any proxy be received and voted on, unless the same be dated and executed within twelve months next preceding such election or general meeting, and any such proxy received and voted on, as aforesaid, shall be retained, and be filed among the papers of the company until after the next annnal election or general meeting, subject to the examination of any stockholder who may demand it.

Sec. 7. In case it shall happen that an election of directors shall not be made on any day appointed by said company, said company shall not for that cause be deemed dissolved, but such election may be holden on any other day which shall be appointed by the directors of said company.

Sec. 8. The said directors shall have full power to make and prescribe and put in force such by-laws, rules and regulations, and the same to alter and amend as they shall deem needful and proper, touching the disposition and management of the stock, property, estate and effects of said company, not contrary to this charter, and all the laws of the State of Arkansas, and of the United States, or of any State assenting hereto, the transfer of shares, and the time they shall be held to entitle the owner to vote

thereon; the duty and conduct of their officers and servants, touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company may accept and receive donations in land or money, or any other property useful to the company; purchase, hold and convey such estate as may be necessary and convenient, in accomplishing the objects for which this incorporation is intended; and may by their agents, surveyor, engineers and servants, enter upon all lands and tenements through which they may deem it necessary to make said road.

Sec. 9. Certificates of stock shall be given to the stockholders, signed by the president, and countersigned by the secretary. The stock shall be assignable by transfer on the books of the company, personally, or by agents or attorney, or by the administrator, executor or guardian, the consent of the president and directors being thereto had; but such stock shall be held at all times by the company for any debts from the holder thereof to the company, or for any sums that may hereafter become due on contract made prior to such transfer; *Provided*, No transfer of stock shall be binding on the company until regularly entered in their books. Any State, or any citizen, corporation or company, of any other State or county, may subscribe for, and hold stock in said company, with all the rights, and subject to all the liabilities of any other stockholder, and none other.

Sec. 10. Said company shall have power to call for such portions of the stock subscribed, on each share, in any one year, as they may think proper, to be paid at such times and place as they may designate, by giving sixty days'

notice in some newspaper nearest to where said stock shall be made payable, in which shall be specified the amount demanded on each share, and the time and place of payment. If any stockholder shall neglect or refuse to pay any such requisition within ten days after the time named for such payments, the company may bring suit against such delinquent for the amounts due and called for, in any court of competent jurisdiction, and receive the amount due with ten per cent. damages for such detention, and ten per cent. interest from the time due until paid; and if the amount cannot be made on execution, or if such delinquent is out of the State, then the company may, by an order, on their books, declare such stock forfeited to the company, with whatever amount may have been paid thereon. And no such delinquent, before the forfeiture of the stock, shall have any right to vote for directors, or receive any dividend on his, her or their stock, until the company shall be fully paid and satisfied.

Sec. 11. Said company are hereby authorized to receive the bonds of any county, incorporated town or city, becoming subscribers to the capital stock of said company, at par, in lieu of cash; and if any subscriber to stock shall be taxed by virtue of any law or ordinance for the payment of subscription to stock in said company, he shall have the right to reduce the number of his shares by an amount equal to the tax imposed, under such rules and regulations as the company may adopt, but that right must be exercised within thirty days from the date of such law or ordinance, after which time it shall not be allowed.

Sec. 12. Whenever, in the construction of said road, it shall be necessary to cross or intersect any established

road or highway, it shall be the duty of said company so to construct said road across such established road or highway as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the lands of any individual, it shall also be their duty to provide for such individuals proper wagon or cart-ways to cross such road or roads, from one part of his, her or their land to another; and also, when it shall be necessary to cross any navigable river or water course, such crossing must be done without the obstruction of the navigation upon such river or water course.

Sec. 13. It shall be lawful for said company to purchase and place, or prescribe the kind of carriages that may be used in said road, whether propelled by steam or other power, for the transportation of passengers, and all kinds of produce, lumber, goods, wares, and merchandise, or other kinds of property; prescribe the width of track, gauge, the construction of wheels, weight of loads, and all matters and things respecting the use of said road, and the conveyance of passengers and property, and for this and other purposes, the said company may construct said road with tunnels, gates, bridges, viaducts, culverts, depots, water stations, toll and warehouses that may be considered necessary and proper for the interest of said company, and convenience of the public; and the said company shall have the power to levy and collect, for the use of said company, the tolls and freights of said road.

Sec. 14. Semi-annual dividends of so much of the profits as the company may deem expedient, shall be made on the first Mondays of December and June of each year, unless

the company desire it on different days, and paid to the stockholders so soon thereafter as they can with convenience; and no dividend shall be made to a greater amount than the net profits, after the deduction of all expenses; and said company may retain such proportion of the profits as a contingent fund, to meet subsequent expenditures, as they shall deem proper.

Sec. 15. A regular annual meeting of the stockholders shall be held at the time and place appointed for the election of directors of said company, and they may be called at any time between the annual meeting of the board of directors, or by the stockholders holding one-fourth of the whole stock subscribed, upon giving thirty days' notice, in at least three public newspapers, of the time and place of holding the same, and when any such meetings are called by the stockholders, said notice shall also specify the particular object of the call, and if, at any such called meeting, a majority of the stockholders, in value, of said company are not present in person or by proxy, such meeting shall be adjourned for one week, and the subsequent meeting can act and bind the stockholders of said company.

Sec. 16. At the regular annual meeting of the stockholders of said company, it shall be the duty of the board of directors in office the preceding year, to exhibit a clear and succinct statement of the business of the company, as also, to submit at such meetings all the books and accounts of the company to the inspection of the stockholders, as also, at all times, to the inspection of committees appointed by the stockholders at any of their said meetings.

Sec. 17. Every president and director of said company, before he shall act as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of his said office to the best of his skill and judgment, and the board of directors may require a like oath to be administered to the secretary and treasurer, and others in their employ, and in addition thereto, bond and security in such amount as they may think advisable, conditioned for the faithful performance of the duties of their

be passed with a view to facilitate

company, or for any other purpose; and this act of incorporation shall be held and deemed a public act, and be liberally construed, and the regular organization, under the same, be presumed and considered proved.

Sec. 24. *Be it further enacted*, That nothing shall be so construed in this act granting banking privileges.

Approved, 15th January, 1857.

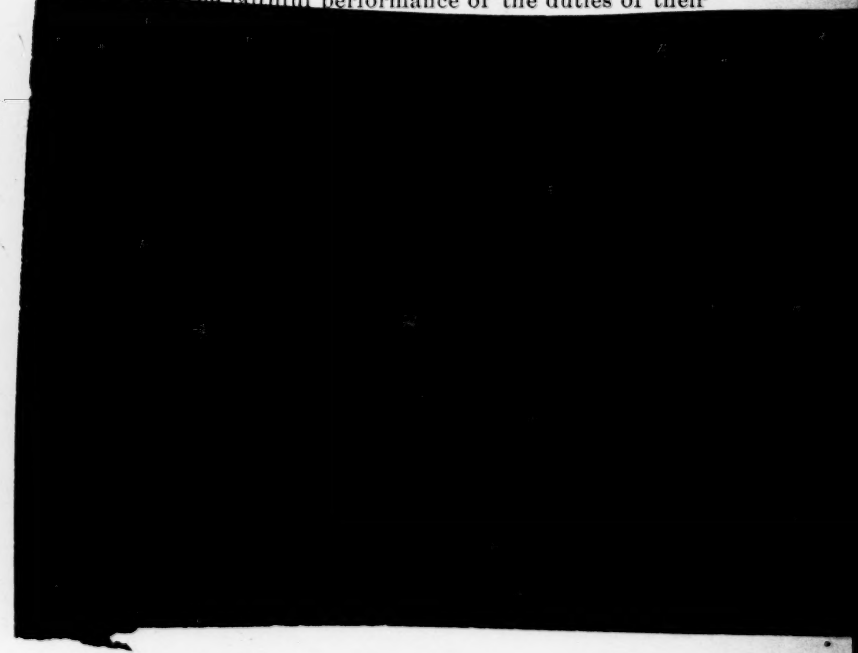
Sec. 19. All contracts and engagements authenticated by the president of the board shall be binding on the company, with seal or other such mode of authentication as the company by its bylaws may direct.

the company desire it on different days, and paid to the stockholders so soon thereafter as they can with convenience; and no dividend shall be made to a greater amount than the net profits, after the deduction of all expenses; and said company may retain such proportion of the profits as a contingent fund, to meet subsequent expenditures, as they shall deem proper.

Sec. 15. A regular annual meeting of the stockholders shall be held at the time and place appointed for the election of directors of said company, and they may be called at any time between the annual meeting of the board of directors, or by the stockholders holding one-fourth of the whole stock subscribed, upon giving thirty days' notice, in at least three public newspapers, of the time and place of holding the same, and when any such meetings are called by the stockholders, said notice shall also specify the particular object of the call, and if, at any such called meeting, a majority of the stockholders, in value, of said company are not present in person or by proxy, such meeting shall be adjourned for one week, and the subsequent meeting can act and bind the stockholders of said company.

Sec. 16. At the regular annual meeting of the stockholders of said company, it shall be the duty of the board of directors in office the preceding year, to exhibit a clear and succinct statement of the business of the company, as also, to submit at such meetings all the books and accounts of the company to the inspection of the stockholders, as also, at all times, to the inspection of committees appointed by the stockholders at any of their said meetings.

Sec. 17. Every president and director of said company, before he shall act as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of his said office to the best of his skill and judgment, and the board of directors may require a like oath to be administered to the secretary and treasurer, and others in their employ, and in addition thereto, bond and security in such amount as they may think advisable, con-



Sec. 19. All contracts and engagements authenticated by the president of the board shall be binding on the company, with seal or other such mode of authentication as the company by its bylaws may direct.

Sec. 20. No person but a *bona fide* stockholder, in his own right, of at least five shares, which he shall have held at least three months previous to his election (except the first election), shall be president or director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first), who shall not have held, in his own right, the shares on which he offer to vote, at least three months.

[redacted]

Sec. 22. The board of commissioners, for the time being, by themselves, their officers or agents, may exercise all the powers herein granted, for the purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road, and for transportation on the same

of any goods, wares and merchandise, with all such powers and authority of control and management of the affairs of said company as may be necessary and proper to carry into complete and full effect the meaning and intent of this act of incorporation.

Sec. 23. Said company may accept, through its board of directors, any supplemental or amendatory act of the General Assembly of the State of Arkansas, which may be passed with a view to facilitate the operations of said company, or for any other purpose; and this act of incorporation shall be held and deemed a public act, and be liberally construed, and the regular organization, under the same, be presumed and considered proved.

Sec. 24. *Be it further enacted*, That nothing shall be so construed in this act granting banking privileges.

Approved, 15th January, 1857.

Appendix No. 2.

THE STATE OF ARKANSAS.

To All to Whom These Presents Shall Come—Greeting:

KNOW YE, That whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas, and other States, to reclaim the swamp and overflowed lands within their limits," approved 28th September, 1850. And whereas, under the provisions of the Acts of the General Assembly of the State of Arkansas, regulating the price and sale of lands so granted, the Land Agent for the office established at Jacksonport, in the State of Arkansas, did grant his Swamp Land Certificates, dated the 16th day of March, and April 18th, 1855, and numbered 1204, 1205, 1242, to and in favor of John Walker, for the following described land, to-wit: The south half and the northeast quarter of section fifteen (15); the west half, and the west half of the east half of section twenty-seven (27); the east half of section twenty-eight (28); the north half of the northwest quarter, and the northwest quarter of the northeast quarter of section thirty-four (34), in township nine (9) north of the base line, in range one (1) west of the fifth principal meridian, containing fourteen hundred (1400) acres; and said land having been approved by the United States to the State of Arkansas, as a portion of the swamp and overflowed lands granted to said State by the Act of Congress aforesaid, and the purchase money for said lands, amounting to seven hundred

dollars, having been fully paid; therefore the said John Walker is entitled to a deed from the State of Arkansas for said land.

Now, Therefore, I, J. N. SMITHEE, Commissioner of Lands for the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to the said John Walker, and to his heirs and assigns, the tracts of land hereinbefore designated, and lying and being in said State.

To have and to hold the said tracts or parcels of land hereinbefore described, with the appurtenances and hereditaments, to the said John Walker, and to his heirs and assigns forever.

In Testimony Whereof, I, J. N. SMITHEE, Commissioner of State Lands for the State of Arkansas, have hereunto set my hand, and caused the Seal of my office to be affixed, at the City of Little [SEAL] Rock, on the second day of July, 1877, and of the Independence of the United States of America the one hundred and first year.

J. N. SMITHEE,
Commissioner of State Lands.
By D. W. Lear,
Deputy Commissioner.

Appendix No. 3.

THIS DEED OF CONVEYANCE, made and executed this first day of July, in the year of our Lord one thousand eight hundred and seventy-three, by and from B. Walker and his wife, Sarah Walker, of the county of Shelby, and State of Tennessee, of the first part hereto, unto and with the Memphis and St. Louis Railroad Company, the party of the second part hereto,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of twenty-one hundred dollars ($2100), of the bonds and stock of the said party of the second part, by the said party of the second part, at and before the ensealing and delivery of these presents, unto them in hand paid, the receipt whereof they do hereby acknowledge, have granted, bargained and sold, aliened and conveyed, and do hereby grant, bargain and sell, alien and convey, unto the said party of the second part, hereinafter described sections, and parts of sections or parcels of land, situate in the county of Jackson, and the State of Arkansas, containing (1400 acres) fourteen hundred acres, being the same lands fully described in Schedule A, appended hereto, and herein now particularly referred to and made part of this deed; together with all and singular the appurtenances to the said premises belonging, to have and to hold the above granted lands and premises unto the said party of the second part, its successors and assigns forever.

And the said parties of the first part, and their heirs, shall and will warrant and defend the same unto the said party of the second part, its successors and assigns, forever, against the lawful claims of all persons whatsoever.

And the said Sarah Walker, wife to the said B. Walker, for and on her part and behalf, doth hereby freely and fully *relinquish* and release, unto the said party of the second part all her right and claim to dower in and to the aforesaid granted and bargained premises.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and affixed their seals, at Philadelphia, the day and year hereinbefore first written.

SARAH WALKER, [SEAL]
B. WALKER. [SEAL]

Signed, sealed and delivered in presence of
SAMUEL B. HUEY,
HART JUDAH.

UNITED STATES OF AMERICA.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, }

On this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-three, before me, Samuel B. Huey, Commissioner of the State of Arkansas, appointed by the Governor thereof to take the acknowledgment and proof of the execution of deeds and conveyances within and for the State of Pennsylvania, to be recorded in the State of Arkansas, appeared in person B. Walker and Sarah Walker, his wife, to me personally known as the persons whose names appear upon the within and foregoing deed of conveyance, as of the part grantors, and stated "that he had executed the same for the con-

sideration and purposes therein mentioned and set forth;" and I do so hereby certify.

And I further certify, that, on this day, "voluntarily" appeared before me Sarah Walker, to me well known as the person whose name appear upon the within and foregoing deed of conveyance, "and in the absence of her said husband, declared that she had signed and sealed a relinquishment of dower therein expressed, for the purposes therein contained and set forth, without compulsion or undue influence of her husband."

IN TESTIMONY WHEREOF, I have hereunto set my hand as such Commissioner, and affixed my seal hereunto, in the county and State aforesaid, on the day and year first above written.

[SEAL]

SAMUEL B. HUEY,
A Commissioner for Arkansas in Pennsylvania.

STATE OF ARKANSAS, }
COUNTY OF JACKSON. }

I, MICHAEL McCANANY, County Clerk and ex officio Recorder, within and for the county aforesaid, do hereby certify that the foregoing instrument of writing was filed for record in my office on the sixteenth day of July, A. D. 1873, and the same is now duly recorded in Record Book T, page 115.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, this thirteenth day of September, A. D. 1873.

[SEAL]

M. McCANANY,
Clerk and ex-officio Recorder.
By CHAS. E. THORNE,
Deputy Clerk.

SCHEDULE A.

(*Appended to the within Deed.*)

Parts of S. half of section 15, township 9 N., range 1 W., 320 acres, in Jackson county, Arkansas.

Parts of N. E. quarter of section 15, township 9 N., range 1 W., 160 acres, in Jackson county, Arkansas.

Parts of W. half of section 27, township 9 N., 1 W., 320 acres, in Jackson county, Arkansas.

Parts of W. half of E. half of section 27, township 9 N., range 1 W., 160 acres, in Jackson county, Arkansas.

Parts of E. half of section 28, township 9 N., Range 1 W., 320 acres, in Jackson county, Arkansas.

Parts of N. half of N. W. quarter of section 34, township 9 N., range 1 W., 80 acres, in Jackson county, Arkansas.

Parts of N. W. quarter of N. E. quarter of section 34, township 9 N., range 1 W., 40 acres, in Jackson county, Arkansas.

1400 acres in Jackson county, Arkansas.

Appendix No. 4.

1. E. half of E. half of sec. 26, 160 acres.
N. E. half of N. E. quarter of sec. 35, 40 acres.
The above in T. 9 N., R. 1 W. Fifth Principal Meridian, in Jackson county, Arkansas. Total, 200 acres.

2. N. half of N. E. quarter, 80 acres.
S. W. quarter of N. E. quarter, 40 acres.
S. half of N. W. quarter, 80 acres.
S. W. quarter, 160 acres.
W. half of S. E. quarter, 80 acres.
The above of sec. 24, in T. 8 N., R. 2 W. of said meridian, in Jackson county, Arkansas. Total, 440 acres.

3. S. half of S. half of sec. 13, 160 acres.
S. E. quarter of sec. 23, 160 acres.
S. W. quarter of N. E. quarter of sec. 25, 40 acres.
N. E. quarter of sec. 26, 160 acres.
The above are in T. 8 N., R. 2 W. of said meridian, in Jackson county, Arkansas. Total 480 acres.

4. Sec. 17, 640 acres.
N. half of sec. 20, 320 acres.
E. half of E. half of sec. 18, 160 acres.
E. half of N. E. quarter of sec. 19, 80 acres.
The above are in T. 11 N., R. 1 E. of said meridian, in Poinsett county, Ark. Total, 1200 acres. Grand total, 2320 acres.

I hereby transfer and convey unto the Memphis and St. Louis Railroad Company and its assigns the foregoing lands, at the price of two dollars and fifty cents per acre, payable in the stock of said company, and on the terms and conditions of said company, for the subscription of lands to said company, etc.

Given under my hand and seal this, February 14, A. D. 1868. J. M. GONDER. [SEAL]

Test: W. J. WALKER,
GEO. HUMPHREY.

Appendix No. 5.

Pursuant to previous notice, the Board of Commissioners of the Memphis and St. Louis Railroad Company met at the office of Samuel P. Walker, in the City of Memphis, Tennessee, on Saturday, the 9th of May, A.D. 1857.

Present—Samuel P. Walker, Ethel H. Porter, Thomas Peters, Rhea Wallace, H. B. Edmonson, Thomas J. Blackmore and Elliot H. Fletcher, commissioners appointed by the General Assembly of the State of Arkansas, by An Act to incorporate the Memphis and St. Louis Railroad Company, approved January the fifteenth, A.D. 1857, and organized the said board by the election unanimously of Ethel H. Porter, President of said company, who took the oath required, and John T. Swayne, Secretary and Treasurer thereof. And thereupon Rhea Wallace tendered his resignation as one of said commissioners, which was accepted, and, on motion, the vacancy thereby occasioned, was supplied by the election of Amos Woodruff, commissioner, who appeared and took his seat as such.

On motion, the act aforesaid being seen and understood by the Board, the same was unanimously accepted, and the President directed to have 250 copies of the same printed for the use of the company.

On motion, the following preamble and resolutions were unanimously adopted:

WHEREAS, It appears to this Board, that by a recent act of the Congress of the United States, confirming to the State of Arkansas certain lands as "swamp and overflowed land," there are now vacant about 300,000 acres thereof, extending about fifty miles north and south, and about eighteen miles east and west, along the route of the Memphis and St. Louis Railroad, should the same be run on the most direct route towards the southern terminus of the St. Louis & Iron Mountain Railroad; therefore,

1. *Resolved*, That with the said lands, or the aid of the same, the building of the said railroad may be procured, or materially promoted, and that the same would be useful to the company, and necessary and convenient in accomplishing the objects intended in the incorporation of the same; and that we secure for the company as much of said lands as may be had and purchased with the stock of the company, at the price of one dollar and twenty-five cents per acre, and the President of the company, Ethel H. Porter, is hereby authorized and empowered to contract for, purchase and secure the same accordingly, or as much thereof as may be so contracted for, purchased or secured, and that said President issue stock accordingly.

2. *Resolved*, That said President be, and he is hereby authorized to open a book at St. Louis, or elsewhere, at such time or times as he may see proper, for the taking of stock in said company, in the manner and on the terms and conditions indicated, and set forth in the subjoined form, which shall be copied into said book, to be signed by the parties so taking stock, and the same, when signed, shall be binding on the company to every intent and purpose thereof, to-wit:

We the subscribers hereunto, agree to and do hereby take stock in the Memphis and St. Louis Railroad Company, on the terms and conditions following, to-wit:

We will pay to the Memphis and St. Louis Railroad Company the amount subscribed by each of us, as set out opposite to our names, on or before the first day of September, A.D. 1857, this time being of the essence of this contract.

The money so paid shall be expended by said company in the purchase of lands from the State of Arkansas, denominated swamp and overflowed land, along and so near to the line of the contemplated Memphis and St. Louis Railroad as three hundred thousand acres can be obtained, the expense of selecting locating and obtaining titles to said land to be paid by said company and the subscribers jointly, each party paying half.

The titles to said land, when obtained, shall be made to the Memphis and St. Louis Railroad Company, and one-half thereof, on application of the subscribers, or a majority of them, shall be by said company conveyed to the said subscribers in fee, or to any person or persons for them, at any time after the titles thereto shall have been perfected according to the amount each shall have paid. In the event of any difficulty in dividing said land between the company and the subscribers, each party shall choose one man, these two a third, and the three shall make the division.

There shall also be issued by the company, to each subscriber, a certificate of shares of stock, equal to the amount of money paid to said company as aforesaid, in considera-

tion of the amount of land retained by the company as procured as aforesaid, which said land shall be applied by the company to the construction of the said road, in the State of Arkansas.

In lieu of the money aforesaid, payable September the 1st, as aforesaid, any person or party owning and holding lands in said State, within the limits of an average of ten miles of said road, shall be allowed to pay off his or their subscriptions as aforesaid, in land, within said limits, at one dollar per acre, conveying the same to said company and receiving therefor the stock of the company at par.

On motion, the Board adjourned, to meet on the call of the President.

ETHEL H. PORTER, President.

J. T. SWAYNE, Secretary.

These By-Laws were changed after the close of the war, as regarded the quantity of land to be secured, the price to be paid, its location in relation to the line of railroad, etc., but the object of the company to convert their capital into land has not been varied from at any time, and now said railroad company has 680,000 acres of land in Arkansas, secured by warrantee deeds, paid for with its capital stock.

E. H. PORTER, President.

September, 1880.

Appendix No. 6.

ACTS OF CONGRESS.

AN ACT to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

Sec. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the land described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and, at the request of said Governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the Legislature thereof; *Provided, however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands, by means of the levees and drains aforesaid.

Sec. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal sub-divisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when a greater part of a sub division is not of that character, the whole of it shall be excluded therefrom.

Sec. 4. *And be it further enacted*, That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

Approved, September 28, 1850.

AN ACT for the relief of purchasers and locators of swamp and overflowed lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior, or other officer of the Government of the United States, to the contrary notwithstanding; *Provided*, That in

all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of said land to any individual or individuals, prior to the entry, sale or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior; *And provided further*, That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the general land office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

Sec. 2. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the commissioner of the general land office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States; and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid; *Provided, however*, That the said decisions of the commissioner of the general land office shall be approved by the Secretary of the Interior.

Approved March 2, 1855.

AN ACT for the relief of the purchasers of swamp lands from the States in which the same are situated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selection of swamp and overflowed lands granted to the several States by the act of Congress, approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of the second of March, 1849, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the commissioner of the general land office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law. *Provided, however*, That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March 2, 1855, which shall be, and is hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage.

Approved, March 3, 1857.

STATE LAWS.

AN ACT to provide for the reclaiming of the swamp and overflowed lands donated to this State by the United States.

Section 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the Governor is hereby authorized and required to appoint three competent persons to act and be known as the board of swamp land commissioners, who shall hold their appointment for the term of two years, and until their successors are appointed and qualified.

Sec. 2. *Be it further enacted*, That said commissioners, before entering upon the discharge of their duties, shall take an oath before the judge of some court of record faithfully to demean themselves in the discharge of their duties, and they shall also severally enter into bond to the State of Arkansas, with security, to be approved by the Governor, in the penal sum of fifty thousand dollars, conditioned that they will faithfully and honestly discharge their duties as hereinafter prescribed.

Sec. 3. *Be it further enacted*, That it shall be the duty of said commissioners: *first*, to fix the price of the swamp and overflowed lands donated to the State of Arkansas by the act of Congress, entitled "An act to enable the State of Arkansas, and other States, to reclaim the swamp lands within their limits," approved September 28, 1850, in their present condition, taking into consideration their locality, and the value that will be added to said lands by their reclamation, lists of which, with the valuation of each tract, or legal subdivision, shall be forwarded to the Governor,

subject to his approval or rejection; *second*, to determine the locality, extent and dimensions of the necessary levees and drains in order to reclaim said lands; *third*, to district and classify said lands, and to let out the making of said levees and drains by contract, to responsible persons, at a stipulated price per cubic yard, to the lowest and best bidders. *Provided*, That the commissioners be authorized to reject all bids, even the lowest, when they consider them unreasonable.

Sec. 4. *Be it further enacted*, That the payment for making said levees and drains shall be made in the lands reclaimed or in the proceeds of the sales thereof, at the price previously fixed upon said lands by the commissioners.

Sec. 5. *Be it further enacted*, That the commissioners shall have power to issue land scrip representing quarter section tracts, in which, at his option, any contractor may demand and receive in lieu of the land in kind, payment for his work, which scrip shall be transferable by assignment, and may be located upon any of the unselected portion of said swamp and overflowed land.

Sec. 6. *Be it further enacted*, That when any contractor shall have finished his work in accordance with his contract, and shall have selected his land in payment therefor, or located his scrip in lieu thereof, as above provided, he shall furnish the numbers of such lands to the commissioners, and upon the certificate of the commissioners, the Governor shall execute to such contractor, or his assignee, a deed for such land in due form of law.

Sec. 7. *Be it further enacted*, That the board of commissioners shall have power to employ a competent surveyor

or engineer to co-operate with them in districting and classifying said lands and in determining the locality, extent, and dimensions of the levees and drains necessary to reclaim said lands, and in supervising and passing upon the work of the several contractors.

Sec. 8. *Be it further enacted*, That after the said board of commissioners shall fix the price of said lands in the present condition, taking into consideration their locality, and the value that will be added to said lands by their reclamation, they shall have power to sell any portion of the same, for cash, at not less than the price so fixed, but for as much higher price as may be obtained, and shall furnish the purchasers thereof with a certificate or certificates of purchase and payment, upon the presentation of which to the Governor, he shall execute a deed therefor in due form of law, and the said commissioners may apply the proceeds of such sale to the reclaiming of said lands, as before specified.

Sec. 9. *Be it further enacted*, That said commissioners shall, on the first Monday of October, of each year, render to the Governor an account of all the official transactions during the year, which he, the Governor, shall communicate to the General Assembly at its next subsequent session.

Sec. 10. *Be it further enacted*, That the compensation of the surveyor or engineer shall be fixed by the board of commissioners, to be paid in the land or scrip, at his option, by the commissioners, as in case of contractors, and when he shall have selected his lands, or located his scrip and reported the numbers thereof to the Governor, he, upon

the certificate of the commissioners, shall execute to him or his assignee, a deed therefor in due form of law.

Sec. 11. *Be it further enacted*, That the commissioners shall each receive, as a compensation for their services, two thousand dollars per annum, to be paid in land or scrip; and when they shall have selected their land or located their scrip, and reported the numbers thereof to the Governor, he shall execute deeds therefor to them or their assignees in due form of law.

Sec. 12. *Be it further enacted*, That the proposed levees shall be constructed as near as practicable (taking into consideration the caving of shores) to the bank of the river or other water courses, and in all cases shall follow the general course of the rivers, or other water courses, and be so located as to accomplish the largest amount of reclamation with the least injury and inconvenience to individuals.

Sec. 13. *Be it further enacted*, That all persons legally entitled by any act of Congress heretofore passed, either in their own right, or as the legal assignee of another, to right of pre-emption on any of said swamp and overflowed lands, or who shall reside or who shall have improved the same, shall have the exclusive right of purchase thereof, to the extent of their claims, for the period of twelve months from and after the date of the patents issued by the United States to this State, at the price previously fixed upon the same, not to exceed one dollar and twenty-five cents per acre.

Sec. 14. *Be it further enacted*, That to encourage by all just means the progress and completion of the reclamation

by offering inducements to purchasers and contractors to take up said lands; that the swamp and overflowed land shall be exempt from taxation for the term of ten years, or until said lands are reclaimed.

Sec. 15. *Be it further enacted*, That said commissioners shall proceed immediately to ascertain the swamp and overflowed lands granted to the State by the act of Congress, approved the 28th September, 1850, and shall report the same to the Governor, on oath by accurate lists, whose duty it shall be to file the same in the office of the surveyor general, and to enable said commissioners to execute this duty speedily, they are hereby empowered to appoint such number of competent persons (not to exceed one for each county, that contains swamp lands) to aid them therein, who shall be entitled to receive as a compensation for their services two dollars per diem to be paid as in other cases, in land or scrip.

Sec. 16. *Be it further enacted*, That the board of commissioners shall have power to appoint such agents as they may find necessary, to consist of not more than three for any one land district, as fixed by the commissioners, to aid in the location and construction of the necessary levees and drains and in classifying and districting said swamp and overflowed lands, who shall receive as a full compensation for their services, two dollars per day for each day they are actually employed, to be paid in land, scrip, or cash, by the board of commissioners, as in case of contractors.

Sec. 17. *Be it further enacted*, That nothing herein contained shall authorize said commissioners to sell any of

said lands at a less price than fifty cents per acre; *Provided*, That two of the commissioners shall constitute a quorum to do business and that no member of the board shall participate in placing the value on the land in which his scrip shall be redeemed.

Sec. 18. *Be it further enacted*, That where partial levees have been made by individuals, or voluntary associations, or where such levees shall be hereafter so made, and in the judgment of said board of commissioners, such partial levees shall be considered an essential aid in their proposed system of reclamation, and the board of commissioners to adopt them as a part of their general system of reclamation, that in such cases they shall make compensation therefor, either in land or scrip, at their option.

Approved, January 6th, 1851.

AN ACT supplemental to an act to provide for reclaiming the swamp and overflowed lands within this State, approved, January 6th, 1851.

Section 1. *Be it enacted by the General Assembly of the State of Arkansas*, That the board of swamp land commissioners shall lay off the country in which said swamp and overflowed lands lie into convenient districts, each to embrace the water courses and their confluents, whereon levees and embankments may be necessary to reclaim said lands.

Sec. 2. *Be it further enacted*, That said commissioners, in letting out contracts for the making of embankments on the Arkansas river, shall let out the contracts, and pro-

ceed with the work on both sides of said river, simultaneously, so far as the same is practicable, so as to afford equal protection to the cultivators and occupants of land on either side of said river.

Sec. 3. *Be it further enacted*, That said board of swamp land commissioners shall keep an office for the transaction of business at such points as a majority of said commissioners may designate, and it shall be their duty to convene at said place, once in every three months, and oftener if it shall be necessary for the proper dispatch of their duties, at which place the record of their joint proceedings shall be kept, and said board shall appoint a secretary, and fix his compensation, to be paid as in other cases.

Sec. 4. *Be it further enacted*, That any person owning lands on the banks of any river, in any swamp and overflowed land district, shall have the preference of taking the contract to levy such lands; *Provided*, He takes such contract at the lowest bid, and such person so contracting, shall have the preference to take in pay for executing his contract, any lands, swamp or overflowed, lying in the rear adjacent to his own lands.

Sec. 5. *Be it further enacted*, That the board of swamp land commissioners are hereby empowered to demand of any receiver, from the proper accounting officers of the United States, indemnity at the rate of one dollar and twenty-five cents per acre, for any swamp and overflowed lands within this State, which have been sold or disposed of by the United States, since the 28th of September, 1850, or which may hereafter be sold or disposed of by the United States.

Sec. 6. *Be it further enacted*, That all moneys accruing from this source, shall be applied by the board of swamp land commissioners according to the provisions of the act which this is intended to amend.

Sec. 7. *Be it further enacted*, That the provision of section seventeen, of the act which this is intended to repeal, is hereby repealed, except so much thereof as limits the price of land to be sold by said board.

Approved, January 11th, 1851.

AN ACT to appreciate the value of swamp and overflowed lands.

Section 1. *Be it enacted by the General Assembly of the State of Arkansas*, That it shall and may be lawful for any plank or stone road company, hereafter incorporated in pursuance of law to file with the swamp land commissioners an application to levee and drain the said lands, setting forth therein the point of beginning, the route, direction, and terminus of such plank or stone road; and when it shall appear to the satisfaction of said commissioners, or, in their opinion, the same will reclaim or appreciate in value the lands thereof, to proceed forthwith to lay off the same, beginning at the point designated in said application; fixing the direction, the grade, and terminus of the same; and in levying and draining the said route, such corporation shall be entitled to receive all the benefits, privileges and immunities by law conferred upon contractors for levying and draining said lands, and shall be subject to like pains, penalties, limitations and restrictions. *Provided always*, That said corporation shall, within two

years from and after the passage of this act, cover such levee or embankment or drain with stone or plank ten feet in width. *And provided further*, That such corporation shall clear out of such way all obstructions to the width of eighteen feet, so as to afford a safe and convenient passage thereon.

Sec. 2. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

Approved, 1st January, 1853.

AN ACT to provide for assessing and taxing reclaimed swamp and overflowed lands.

Section 1. *Be it enacted by the General Assembly of the State of Arkansas*, That it shall be the duty of the assessor of taxes for each county in this State diligently to inquire and ascertain what lands sold as swamp and overflowed lands under the provisions of an act entitled "An act to provide for the reclaiming of the swamp and overflowed lands donated to this State by the United States, approved January 6, 1851," confirmed by the General Government to the State of Arkansas, have been protected from overflow by levees, or are, or have been, by other means reclaimed; and to assess the same for taxation.

Sec. 2. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, 10th January, 1853.

IN THE

Supreme Court of the United States.

October Term, 1881.

THE MEMPHIS & ST. LOUIS RAILWAY CO., PLAINTIFF IN ERROR,

vs.

JOHN R. LOFTIN, DEFENDANT.

In Error to the Supreme Court of Arkansas.

BRIEF FOR DEFENDANT.

The plaintiff filed a complaint in the Circuit Court of Jackson county, Arkansas, against the defendant, as collector, to enjoin the collection of taxes assessed against the plaintiff's lands lying in that county, and stated, in substance—

That it is a corporation created by an act of the general assembly of the State of Arkansas, entitled "An act to incorporate the Memphis and St. Louis Railroad Company," approved January 15, 1857, which is declared therein to be a public statute; that in order to advance and secure the building of said railroad, regarding it as a public highway of great importance, the said general assembly in the said charter granted the property of said company an exemption

from taxation in the following language: "SEC. 21. The capital stock of said company, with all the immunities and franchises herein specified, and all machinery, cars, engines, or carriages belonging to said company, together with all their works, and property, and profits which shall arise from the same, shall be vested in the respective stockholders forever, in proportion to their respective shares; and the capital stock of said company, and the dividends, shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock, and the road, with all its fixtures and appurtenances, including work-shops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road, or its fixtures, which will reduce its dividends below ten per centum; said stockholders shall not be bound or liable for any greater amount than the respective share of stock which they or either of them own."

2. And it is also provided therein that said charter should be liberally construed; that relying on said exemption, said company was duly organized, and said charter was accepted, and citizens were led to invest in the stock of said company, as otherwise they would not have done, and thus the plaintiff submits that a contract was formed between the said State of Arkansas and the plaintiff that the property thus named should be exempted from taxation for the period and in the manner therein specified. And the plaintiff says that it is now the owner of the following lands, lying in Jackson county, that is to say:

Parts of sec.	Section.	Town.	Range.	Acres.	County.
S. ½	15	9	1 w.	320	Jackson.
N. E. ¼	15	9	1 w.	160	"
W. ½	27	9	1 w.	320	
W. ½ of E. ½	27	9	1 w.	160	
E. ½	28	9	1 w.	340	
N. ½ of W. ¼	34	9	1 w.	80	
N. W. of N. E	34	9	1 w.	40	
E. ½ of E. ½	26	10	1 w.	160	
N. E. of N. E.	35	10	1 w.	40	
				1,600	

3. And that the said lands were acquired by the plaintiff and are now held by it for the purpose of raising money to build said road, and that it is a part of the property of said company, fully represented by its capital stock and not otherwise, and that said road has not as yet been completed, and that no dividend has as yet been realized on said capital stock, or any part thereof. Therefore the said plaintiff submits that said lands are not taxable, and were not subject to any tax for the year 1876; and yet, the said plaintiff says that the assessor of said county has proceeded to assess said lands for the said year 1876, and that the said assessment has been carried into the tax book of said county for said year, and that the tax book aforesaid is now in the hands of the said defendant, as collector of said county, who now holds the same, as will appear by a copy of so much of said tax book as refers to said lands hereto annexed marked Exhibit A and made part hereof, and that the said collector is now proceeding to enforce the collection of said taxes, amounting, as shown by said Exhibit A, to the sum of dollars.

4. That a part of said lands, that is to say, said E. ½ of said section 28, were purchased as swamp and overflowed lands from the State of Arkansas, under the provisions of an act of the said general assembly, entitled "An act to provide for the reclaiming of swamp and overflowed lands, donated to this State by the United States," approved January 6, 1851, which act contained the following, among other provisions:

"SEC. 14. Be it further enacted, that to encourage by all just means the progress and completion of the reclamation by offering inducements to purchasers and contractors to take up said lands, that the swamp and overflowed lands shall be exempt from taxation for the term of ten years, or until said lands are reclaimed." And the plaintiff says that the said purchase was made, and that said lands were paid for with swamp land scrip of said act on contract for reclaiming swamp lands before the repeal of said section; and that although more than ten years have elapsed since said purchases were made, yet that no part of said last named land has ever been reclaimed. And the plaintiff says that the tax book made out from said assessment has been placed in the hands of the defendant, who is the sheriff and collector of taxes of the State of Arkansas, who has demanded

payment of said taxes, amounting in the aggregate to over dollars; and who threatens to proceed to sell the said lands if the said taxes are not paid, and that the plaintiff has reason to believe, and does believe, that said defendant, unless restrained by injunction, will proceed to do so; that by such sale a cloud will be cast on the title to said lands by the plaintiff, which will render them unsalable in the market, and that the said sale cannot be annulled in a court of law without bringing a multiplicity of suits against persons who may purchase at said tax sales.

To this complaint Loftin demurred, because, as he alleged, it did not set forth facts sufficient to constitute a cause of action. (Trans., p. 4.)

On argument the Circuit Court sustained the demurrer and dismissed the complaint, and the plaintiff appealed to the Supreme Court of Arkansas, (Trans., p. 5,) and the Supreme Court affirmed the decision of the Circuit Court, (Trans., pp. 5–7,) and the plaintiff brings the case here for review.

The demurrer to the complaint, under the practice, in the form presented, brings up all questions that enter into the making of a case, from the jurisdiction of the court to the facts necessary to show a cause for relief. It is extremely doubtful if, outside of the grounds stated by the Supreme Court of Arkansas, any case is made to justify the interposition of a court of equity. The business of taxation is intrusted especially to the legislative department of the government, and it is considered in any case the exercise of a very delicate power for the courts to stop the collection of taxes. And this is true, particularly true, when the parties taxed have, as they have in Arkansas, full time and opportunity to correct these matters without going into equity. This court has often stated and repeated its dislike to favor any such proceedings, and its utterances on

that subject are upheld by decisions of the highest courts of the States.

Dows v. *Chicago*, 11 Wall., 108.
Hannewinkle v. *Georgetown*, 15 Ib., 547.
State Railroad Tax Cases, 92 U. S. Rep., 575.

And it is respectfully submitted this case falls far below the standard as fixed by the authorities.

The Supreme Court of Arkansas, in passing upon the question whether the lands of this railroad company were exempt from taxation under the twenty-first section of the act incorporating that company, said it could not distinguish this case from one previously decided in that court. (Railway Co. *v.* Loftin, 30 Arks., 693.) The case referred to in 30 Arks., 693, came to his court, and was affirmed. (98 U. S. Reps., 559.)

The argument made here and now, for the plaintiff, was pressed in full force in that case upon this court, but to no purpose.

Indeed, this court had already covered this whole ground, in a very similar case argued for the railroad companies by the same counsel that appears for plaintiff here. (Railroad Cos. *v.* Gaines, 97 U. S. Reps., 697.)

It adds nothing whatever to the strength of this case, that in the law conferring exemption on the *capital stock*, &c., &c., there is a provision for the liberal construction of that act. This, or a similar provision, it will be seen, is to be found in nearly all the laws of this kind. Section 7 of the act chartering the Cairo & Fulton Railroad Company had this provision in it exactly and in so many words, but it made no impression upon this court in the case, in 98 U. S. Reps., *supra*.

The liberal construction of the act had nothing earthly to do with the definition of *capital stock*, nor in determining that *land* was and should be a part of that stock.

The truth is, the very fact that we are forced to an interpretation or construction of the act to bring in the lands, as they are not named in the act, is enough, quite enough, to exclude them. The right to tax, a sovereign right for the keeping up and carrying on of the Government itself, is never adjudged by the courts to be surrendered by intendment, and never at all, except upon the clearest and most explicit language. And when a party comes into court and says, "Here is a piece of property, I think by parsing, spelling, and construing you can exempt from taxation, although it is not named in an act that exempts other property, specifically," he argues himself at once out of court. This doctrine has become so thoroughly established in the courts of the States and of the United States, that it is now axiomatic, and no more time will be consumed as to it than is required to cite some of the most prominent cases of the great many announcing this view.

The State *v.* Morristown Fair Association, 3 Zabr., 195.

State *v.* Newark, 2 Dutch., 519.

21 Iowa, 221; 1 Dillon C. C., 314; 6 Penn., 70.

Vermont Central R. R. Co. *v.* The Town of Burlington, 28 Vt., 193.

Delaware Railroad Tax Cases, 18 Wall., 206.

Erie Railroad Tax Case, 21 Wall., 492.

Bailey *v.* McGuire, 22 Wall., 215.

Tucker *v.* Ferguson, 22 Wall., 527.

Leavenworth, &c., *v.* United States, 92 U. S. Rep., 773.

Turnpike Co. *v.* Illinois, 96 U. S. Rep., 68–9.

Couple this with the other view that all these cases, and many more that might be referred to, announce that grants of this character from the State, or sovereign, are always construed most strongly against the grantee, there can be

no possible pretext for holding that this grant of exemption carried the lands of the company.

The idea pressed so closely on the court that the original clause (sec. 21) exempting certain property from taxation, if it even included the lands of the company, is a contract protected by the Constitution of the United States, is as groundless, under the authorities, as the other position urged, and a number of the cases already cited establish this.

Let it be simplified into the formula of a contract or agreement, if you please:

"Whereas a certain company desires to build a railroad through the State of Arkansas, and in order to facilitate that enterprise, which will be of great benefit to Arkansas, therefore it is hereby agreed and understood by and between said company and the State (through its legislature) the entire property (lands and all, if you please) be exempt from taxation, and no future legislature shall tax said property, until," &c., &c.

Interpreted fairly, this is the sum and substance of the legislative enactment that is to be held a contract. In the *Loftin case*, 98 *U. S. Rep.*, *supra*, this court, in speaking of the acts then discussed, said: "They are in no sense contracts, and are not therefore ~~impeachable~~,"—citing Tucker *v.* Ferguson, 22 Wall., 527, which case really takes in all there is of this cause in all of its proportions.

The undertaking is without mutuality, or reciprocity, of consideration or obligation—a mere nude pact, unclothed with any right of action—a simple bounty on the part of the State, of the expediency of continuing which each legislature is the judge.

In this country, under our theory of government, one legislature is as soverign as another, and the hands of a future legislature cannot be tied as to matters committed to it by the constitution. There are cases, plenty of them, where, under gratuitous legislation of this kind, interests

and rights of third parties, upon the faith of that legislation, have intervened, that have been held as contracts and protected from future legislative interference under the Constitution of the United States, prohibiting the impairing of the obligation of contracts. Such was the case of McGehee *v.* Mathis, 4 Wall., 143, and others cited in brief of counsel for McGehee. But here, as between the State and this company, on this mere gratuity—conceding the gratuity embraces all that is claimed for it—a subsequent legislature can recall it at any time.

Besides the cases cited, see as fully sustaining this position:

Armstrong *v.* The Treasurer, 16 Peters, 281.
Rector, &c., *v.* County, &c., 24 How., 300.
Railroad Co. *v.* Georgia, 98 U. S. R., 359.
Hoge *v.* Railroad, 99 U. S., 348.

This last case reaches all the points made in this.

See opinion of Judge Curtis on an act of the Michigan Legislature, 1 Curtis's Life, &c., 308.

Cicero, in his letters to Atticus, treats with contempt those restraining clauses which endeavor to tie up the hands of succeeding legislatures—"*cum lex abrogatur, illud ipsum abrogatur quo non eam abrogari oporteat.*" L. 3, Ep. 23.

Blackstone says: "Acts of parliament derogatory from the power of subsequent parliaments bind not." 1 Blk., (Sharswood,) 186.

How we have recognized this doctrine in the United States, will be found in 2 Story Const., (Cooley,) sec. 1391, note 3; Ib., 1394, note 2.

In 2d Greenleaf's Cruise, p. 67 (note), we read: "Powers of this class are essential to the constitution of society, as without them no political community can well exist, and necessity requires that they should be continued unimpaired; they are intrusted to the legislature to be exer-

cised, and not to be bartered away, and it is indispensable that each legislature should assemble with the same measure of sovereign power which was held by its predecessor. Any act of the legislature disabling itself from the future exercise of power intrusted to it for the public good must be void, being in effect a covenant to desert its paramount duty to the whole people."

But one word is needed as to the point made by plaintiff's counsel on the swamp lands included in the list. The exemption claimed by act of January 6, 1851, expired in ten years—January, 1861—and this tax was assessed for the year 1876, twenty-five years after the passage of the act, and fifteen years after its expiration. It would be overdoing the business of liberal construction, most decidedly, to hold these lands protected by the act of January, 1851.

And upon the whole record, it must be true, as the court below said, it is impossible to find ground for a discrimination between this case and the other Loftin case. (30 Ark., 693; S. C., 98 U. S. Reps., 559.)

A. H. GARLAND,
For Loftin.